

UNITED STATES OF AMERICA
DISTRICT OF MINNESOTA
Criminal No. 14-358 (DSD/JJK)

UNITED STATES OF AMERICA,)
)
 plaintiff,)
 v.)
)
 Roxanne Merrell,)
)
 defendant.)
)

* * * * *

MOTION FOR DISMISSAL BASED ON UNDUE DELAY

The defendant, Roxanne Merrell, through counsel, Deborah Ellis, hereby moves the court for an order dismissing the complaint for undue delay in bringing this federal prosecution. *See Doggett v. United States*, 505 U.S. 647 (1992); *Barker v. Wingo*, 407 U.S. 514 (1972).

Undue delay occurred in seeking a federal indictment in November, 2014 for conduct alleged to have occurred May 5, 2010. While the Government's agent learned of the conduct on or about April 9, 2014, the federal prosecution was unduly delayed seven months to defendant's prejudice.

The investigation headed by Homeland Security Agent Jared Drengson was sufficiently completely by May 5, 2014 so as to support a Complaint in Washington County, Minnesota on a state charge of Use of a Minor in a Sexual Performance or Pornographic Work in violation Minn.Stat. § 617.246. The Washington County Complaint is attached hereto and is based on the investigation by Special Agent Drengson

as noted in the Statement of Probable Cause on page two of the Complaint.

Following issuance of the Summons and Complaint in Washington County, Ms. Merrell made her first court appearance and was released on her own recognizance - without bail or conditions.

As a result of the allegations in the Complaint filed in Washington County, Child Protection Services from Washington County undertook an investigation of Ms. Merrell. When the investigation began, Ms. Merrell's two children were placed in foster care briefly and then returned to their mother. A Child In Need of Protection or Services (CHIPS) petition was filed in Washington County District Court. Ms. Merrell's two children were appointed a guardian ad litem and the parties were represented by counsel. See Washington County District Court File No. 82-JV-14-198,

Child Protection of Washington County required in-home therapy for Ms. Merrell and her children and placed other requirements upon Ms. Merrell. The CHIPS cases is still pending a periodic court reviews were conducted from May through October.

Ms. Merrell made at least three court appearances in Washington County on her criminal charge before heading to court for a pretrial on November 5, 2014. Ms. Merrell did not make it to the courtroom because she was arrested by Agent Drengson with Homeland Security based on the Indictment filed in this case on November 3, 2014. She has not seen her children since leaving her residence for a routine court appearance November 5, 2014.

The delay has caused extreme prejudice to Ms. Merrell including, but not limited to, being subject to dual prosecutions, having her children temporarily removed from her home while Washington County Child Protective Services conducted an investigation, having her children returned to her approximately one week later - which removal was traumatic for the children- and participation in various therapy sessions along with other child protective services' requirements.

While the delay of seven months may seem slight a first blush, the delay in this instance, where the investigation was completed sufficient to support probable cause on a similar charge, is inexcusable and the prejudice enormous. The delay has infected, if not totally damaged, Ms. Merrell's parent/child relationship to her and her children's detriment. According to the children's guardian ad litem, who was appointed to represent their best interests, the separation has adversely impacted the children.

This motion is based on the indictment, the records and files in the above-entitled action, and any and all other matters which may be presented prior to or at the time of the hearing of this motion.

Date: December 5, 2014

Respectfully submitted,

s/ deborah ellis
DEBORAH ELLIS
Atty. Reg. No. 14616X
101 East Fifth Street, Suite 2626
Saint Paul, MN 55101
651-288-3554

State of Minnesota
County of Washington

District Court
10th Judicial District

Prosecutor File No.
Court File No.

CR-2014-296
82-CR-14-1715

State of Minnesota,

Plaintiff,

vs.

ROXANNE LOUISE MERRELL DOB: 09/15/1979

8579 Ideal Avenue S
Cottage Grove, MN 55016

Defendant.

COMPLAINT

Summons

The Complainant submits this complaint to the Court and states that there is probable cause to believe Defendant committed the following offense(s):

COUNT I

Charge: Use Minors in Sexual Performance/Pornographic Work

Minnesota Statute: 617.246.2

Maximum Sentence: 10 years and \$20,000 for a first offense and 10 years and \$40,000 for a second or subsequent offense

Offense Level: Felony

Offense Date (on or about): 05/20/2010

Control #(ICR#): 14103178

Charge Description: promote, employ, use or permit a minor to engage in or assist others to engage minors in posing or modeling alone or with others in any sexual performance or pornographic work knowing or having reason to know that the conduct intended is sexual performance or a pornographic work

FILED
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File #
WASHINGTON COUNTY
DISTRICT COURT
MAY 05 2014
COURT ADMINISTRATOR
By Deputy

STATEMENT OF PROBABLE CAUSE

The Complainant states that the following facts establish probable cause:

Your complainant is a licensed peace officer with the Cottage Grove Police Department. Based on the reports relating to an incident occurring on or about 05/20/2010 at 8579 Ideal Avenue South in Cottage Grove, Washington County, MN, involving defendant ROXANNE LOUISE MERRELL (dob: 09/15/1979), your complainant offers the following statement to establish probable cause:

On 03/14/2014 Detective Ueland with the Cottage Grove Police Department was informed by Special Agent Drenson of Homeland Security of a suspect, TRAVIS GUENTHER, who had been arrested in North Dakota for Luring Minors by Computers. During that investigation, GUENTHER was discovered to have sexually explicit images of a juvenile female on his computer. In one of the photos, a prepubescent female is seen, whose vaginal area and anal area are spread apart by an adult female's hand. GUENTHER told investigators that the juvenile, later identified as ARC, was the daughter of defendant MERRELL. GUENTHER informed officers that ARC was approximately 8 or 9 years old at the time of the photos and that he had offered defendant MERRELL money in exchange for the photos. GUENTHER stated that defendant MERRELL did take the photos and send them to GUENTHER. The information embedded in these image files indicated that the photos were taken on 05/20/2010 between 2:30 am and 3:00 am. Investigators searched GUENTHER's phone and found a contact with the name "ROXANNE MERRELL" with a phone number that was determined to belong to Sprint Nextel subscriber ROXANNE MERRELL, the defendant herein.

On 03/14/2014, investigators with Homeland Security and the Cottage Grove Police Department executed a search warrant at defendant MERRELL's home in Cottage Grove. Defendant MERRELL gave a statement in which she admitted that GUENTHER offered her money in exchange for photos of MERRELL's juvenile daughter, ARC. MERRELL admitted taking the photos of ARC while ARC was sleeping, and admitted that the hands seen manipulating ARC's vaginal area in the photo were MERRELL's hands. MERRELL stated that she was desperate for money at the time and GUENTHER had offered her \$5,000 for the photos.

SIGNATURES AND APPROVALS

Complainant requests that Defendant, subject to bail or conditions of release, be:
(1) arrested or that other lawful steps be taken to obtain Defendant's appearance in court; or
(2) detained, if already in custody, pending further proceedings; and that said Defendant otherwise be dealt with according to law.

Complainant	Randy McAlister Sergeant 12800 Ravine Parkway South Parkway S Cottage Grove, MN 55016 Badge: 4314	Electronically Signed: 5/5/2014
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Subscribed and sworn to before the undersigned.

Notary Public or Judicial Official	Tom brian Ueland, Peace Officer License Number: 10047, Washington County, Minnesota. My license expires: 06/30/2015 Detective 12800 Ravine Parkway South Parkway S Cottage Grove, MN 55016	Electronically Signed: 5/5/2014
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Being authorized to prosecute the offenses charged, I approve this complaint.

Prosecuting Attorney	Peter Johnson PO Box 6 15015 62nd Street North Stillwater, MN 55082 (651) 430-6115	Electronically Signed: 5/5/2014
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FINDING OF PROBABLE CAUSE

From the above sworn facts, and any supporting affidavits or supplemental sworn testimony, I, the Issuing Officer, have determined that probable cause exists to support, subject to bail or conditions of release where applicable, Defendant's arrest or other lawful steps be taken to obtain Defendant's appearance in court, or Defendant's detention, if already in custody, pending further proceedings. Defendant is therefore charged with the above-stated offense(s).

☒ SUMMONS

THEREFORE YOU, THE DEFENDANT, ARE SUMMONED to appear on **June 12, 2014 at 9:00 AM** before the above-named court at 14949 62nd Street N PO Box 3802, Stillwater, MN 55082-3802 to answer this complaint.

IF YOU FAIL TO APPEAR in response to this SUMMONS, a WARRANT FOR YOUR ARREST shall be issued.

☐ WARRANT

To the Sheriff of the above-named county; or other person authorized to execute this warrant: I order, in the name of the State of Minnesota, that the Defendant be apprehended and arrested without delay and brought promptly before the court (if in session), and if not, before a Judge or Judicial Officer of such court without unnecessary delay, and in any event not later than 36 hours after the arrest or as soon as such Judge or Judicial Officer is available to be dealt with according to law.

☐ Execute in MN Only

☐ Execute Nationwide

☐ Execute in Border States

☐ ORDER OF DETENTION

Since the Defendant is already in custody, I order, subject to bail or conditions of release, that the Defendant continue to be detained pending further proceedings.

Bail: \$

Conditions of Release:

This complaint is issued by the undersigned Judge as of the following date: May 5, 2014.

Judicial Officer

Susan R Miles
District Court Judge

Electronically Signed: 5/5/2014

Sworn testimony has been given before the Judicial Officer by the following witnesses:

COUNTY OF WASHINGTON
STATE OF MINNESOTA

State of Minnesota

Plaintiff

vs.

Roxanne Louise Merrell

Defendant

Clerk's Signature or File Stamp:



RETURN OF SERVICE

I hereby Certify and Return that I have served a copy of this Summons upon the Defendant herein named.

Signature of Authorized Service Agent: